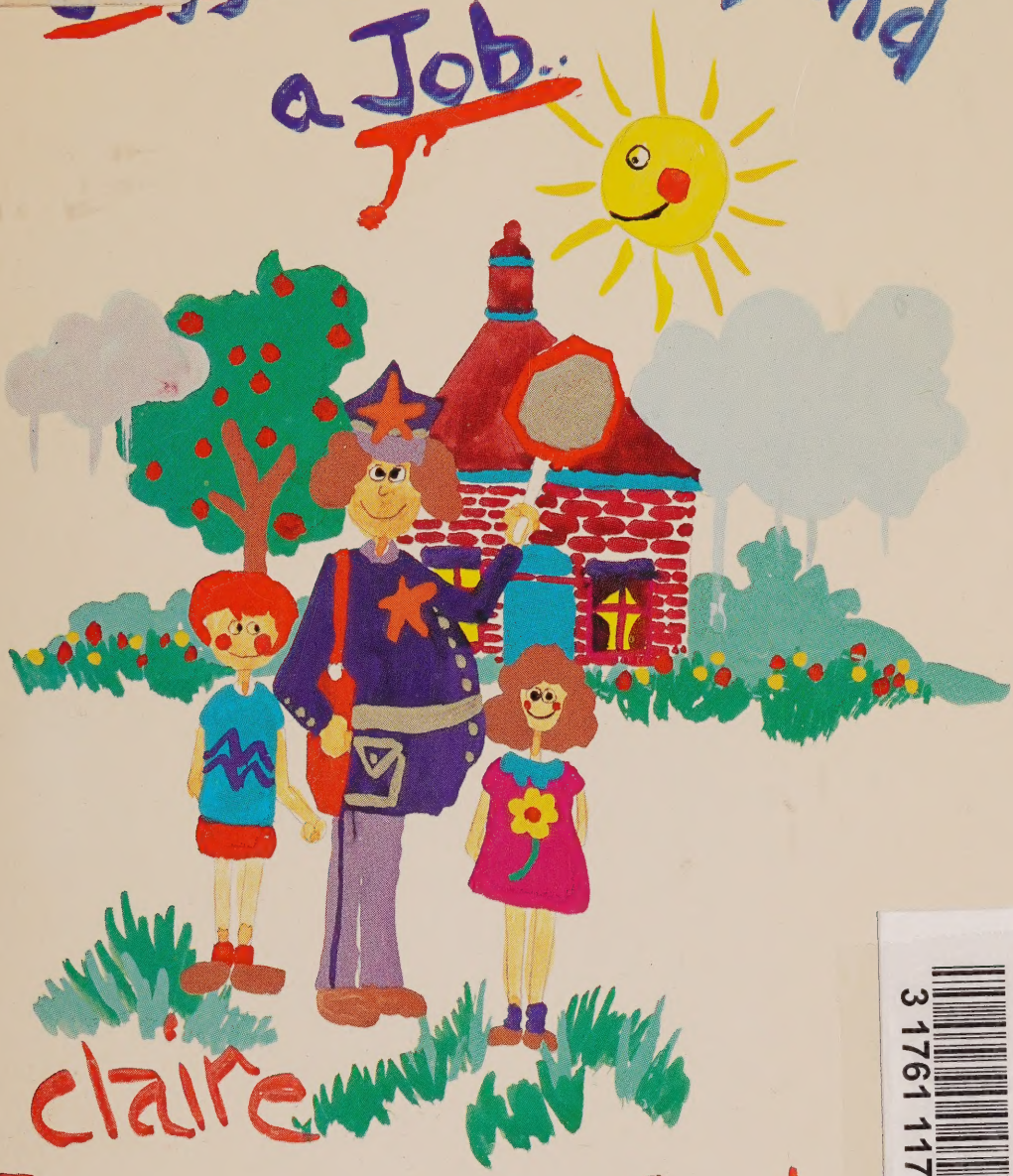
...gling a Family and a Job...



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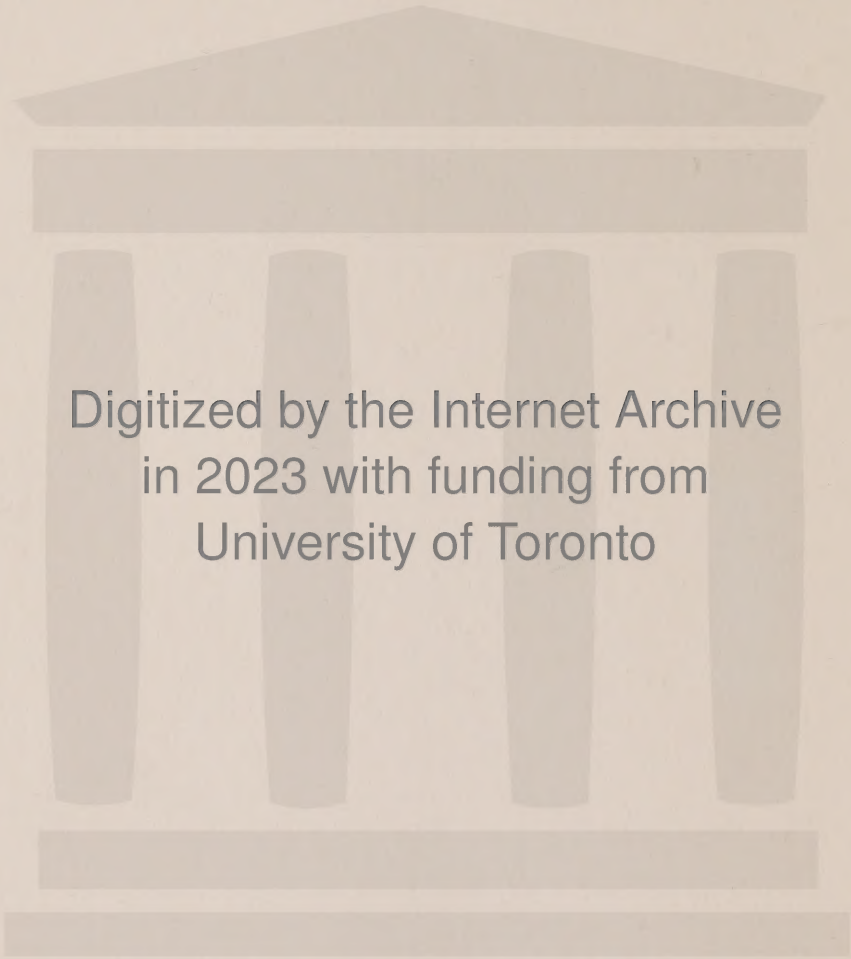
Canadian Advisory Council on the Status of Women
Conseil consultatif canadien de la situation de la femme



Juggling a Family and a Job...

The Canadian Advisory Council on the Status of Women

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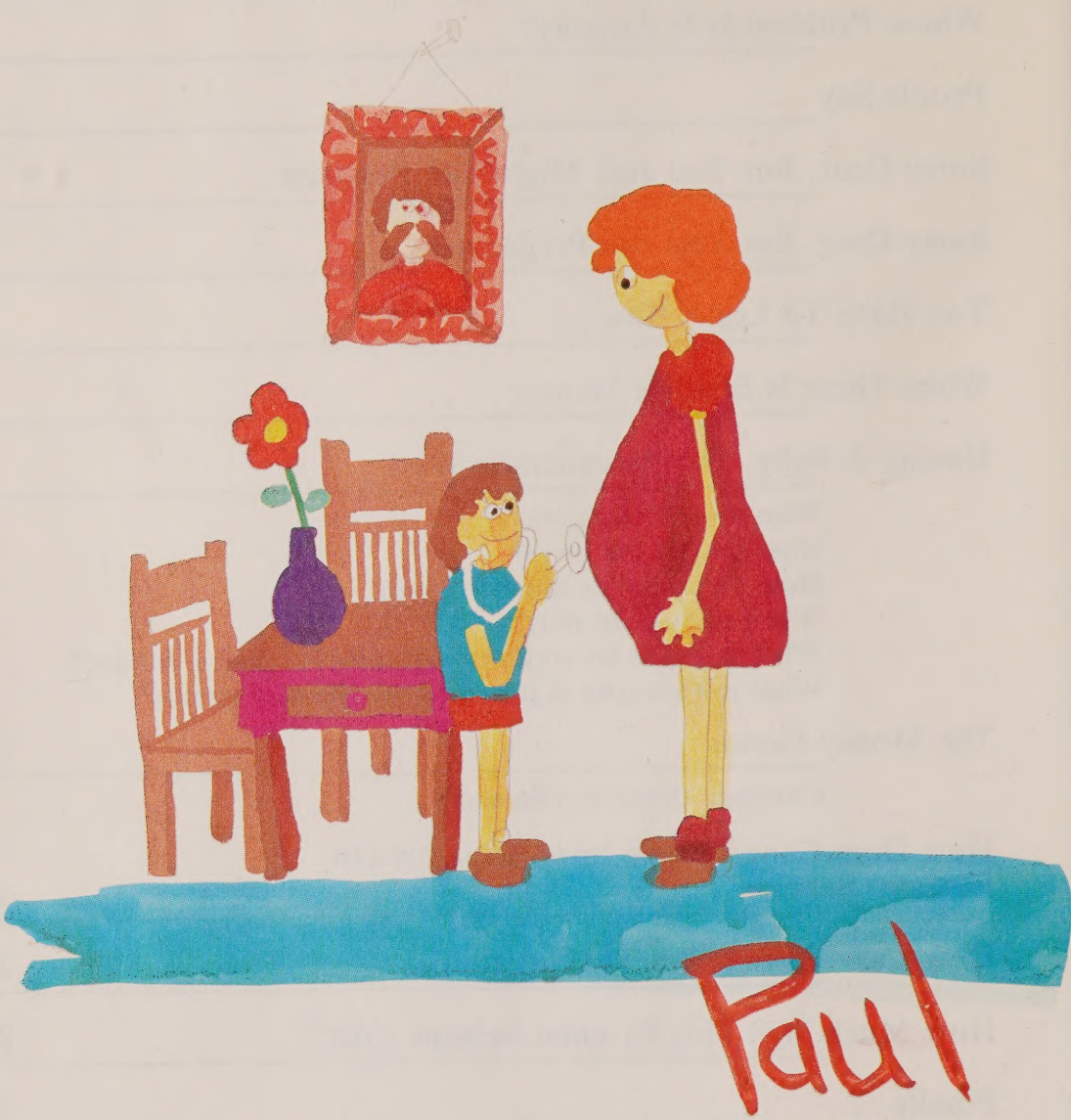

Paul

What's The Problem?

Canadians have always regarded working people and the family with great respect. It is, therefore, surprising to learn that our laws actively discourage people in the paid labour force from having children.

Although the family and the raising of children are held in high esteem in our society, the role of women is not. Society as a whole benefits from the fact that women in the labour force, in addition to their jobs, also shoulder the responsibility and burden of childraising. It is women who actually subsidize the financial and other costs of what society regards as necessary and beneficial to all. However, inadequate compensation and insufficient time off are all that can be expected for those who have to absent themselves from work to have a family. As well, at a time when more men wish to take on their responsibilities as fathers and play a more active role in childraising, they find a great many obstacles in their path.

It should be so easy to have a child if a person is willing and able to. And yet, for low and average income Canadians struggling to hold on to their jobs, experience teaches otherwise. Here are some who found out the truth the hard way.

Marie, a Toronto lab technologist, had worked for over ten years. A year ago, she was laid off from her job — another victim of the recent economic slowdown. Luckily, after a month, she found work in a hospital and was pleased with her new responsibilities. It was only when Marie discovered a short time later she was pregnant that she faced some unexpected troubles. Under Ontario law, an employee is eligible for maternity leave only if she has worked for her employer for one year and 11 weeks prior to the expected date of birth. Because Marie had only worked 11 months for her new employer, she had no job security. Her ten year contribution in the work force counted for nothing. After the baby was born she had to start immediately to look for work at a time when jobs were even harder to find.

Jan, a school teacher with a master's degree in education, applied for a short-term part-time teaching position with a school board in the Maritimes when she was three months pregnant. The interview went well and it was evident that Jan not only had the academic qualifications, but also had considerable teaching experience. Still, she did not get the job. Why? The interviewer made it clear that the deciding factor was the pregnancy and the time needed for childbirth, even though Jan's due date was not going to prevent her from completing the work. In effect, Jan was barred from earning her livelihood for six months.

Martin, a steelworker in Quebec, and his wife Jane, recently had a second child. Jane took her 18 weeks of maternity leave available in that province and received her 15 weeks of Unemployment Insurance Commission (UIC) benefits. Although Jane looked forward to returning to her job, the young couple could not find a day care centre that would accept a four-month-old baby. Also of concern to Martin was that his shift work prevented him from seeing enough of his family. The ideal solution would have been for Martin to stay home for a couple of months and look after his two children. But when he went to see his shop steward, he was told that his collective agreement did not allow for more than two days paid paternity leave, which he had already taken at the time of the birth. Although Martin could have had up to six months leave for illness, vocational training, and even up to two years off for full-time union activities, he could take no time off to look after his children without the risk of losing his job.

Jeannette, a British Columbia police officer for five years, was required to wear a uniform as part of the job. When she was five months pregnant and no longer able to fit into the uniform, her employer tried to force her to take early maternity leave. Although pregnant, Jeannette insisted that she was capable and willing to perform all the duties of her sometimes dangerous position. Her employer did not question her ability to do the job but nevertheless forced her to go on unpaid leave because the standard police uniform no longer fitted her. Fortunately, Jeannette complained, and now there are uniforms for pregnant officers.

These are not unusual situations. On the contrary, Canadian couples are continually facing these and other bureaucratic impediments associated with having a child.

Whose Problem Is It Anyway?

The short answer is: everybody's. Since society as a whole benefits from the bearing and raising of children, it should *aid* parents and not hinder them. Children are our future. When we are old they will be the ones who will look after us, either through individual efforts or their tax dollars. They represent our future; an investment in them is a sound one.

Nevertheless, in Canada we face a conflict between a modern reality and outdated laws. Maternity leave provisions were written with a 1950's ideal family in mind — one in which the father remained the breadwinner all his life and the mother dropped out of the work force completely to start a family. Today in Canada, 41 percent of the 5.5 million couples who have children are made up of partners who are both employed outside the home and the trend does not appear to be slowing down. That means that at least two million families are working hard at combining two jobs with the demands of raising a family. Single mothers have the additional burden of trying to do both on their own. For most parents, it is a difficult and expensive juggling act of day care centres and baby-sitters.

In the last decade, the change in the traditional role of women has been dramatic. In 1983, 53.8 percent of women were in the paid work force compared to 38.3 percent in 1970 — and the majority of them work full time. Those numbers include a large percentage — 69.8 percent — of women who fall into the childbearing years of 20 to 44. Overall, 61 percent of working women are married and 47.9 percent of these have children who are under three years of age. Necessity seems to have been the spur for change for many of these women — 50 percent of women in the paid labor force have husbands who earn less than $15,000 per year.

People Say . . .

There are any number of outdated assumptions concerning working women, childbirth and maternity leave. It is time to put some of them to rest.

Some people believe that women do not go back to paid employment after they have had children. But, in fact, women *do* go back to work after childbirth. Sixty-nine percent of women who request maternity leave return at the end of that leave. The reasons are straightforward. Women in Canada are employed because they have a strong attachment to their job and because the family unit needs the income.

Other people believe that pregnant women get sick a lot and miss time from work. In fact, most women are able to continue working until very near their delivery date and indeed, want to do so. Pregnancy is a normal, healthy condition for women — it is not a state of illness. Very few pregnancies present medical complications which would prevent the woman from working. In those cases, employers should recognize that the women are entitled to standard sick leave benefits.

Some people also argue that because pregnancy is voluntary, the woman should shoulder the consequences of her own actions. But with the inadequacies of birth control information and methods, not all pregnancies are voluntary. Moreover, the consequences of other voluntary, riskier actions are willingly borne by society — for example, injuries from skydiving, race car driving and hockey, to name just a few.

It is also commonly assumed that if mothers do not stay at home, the social fabric of Canada will unravel. Although researchers

have been unable to agree conclusively on the results of various studies, it is clear that they have found no significant differences between the well-being of children whose mothers work outside the home and of children whose mothers stay at home. Children need security, love and affection, but a mother is not the only person who can provide this. Fathers can, but they are given much less opportunity to do so. Good outside care may actually be a plus for the social behaviour and development of children. For those concerned about the effects on a child of having a mother who works outside the home, some studies reveal that women who like their jobs tend to have children who are more outgoing and confident.

It is said that fathers are not interested in childrearing. Today, however, fathers are often present at birth and are vitally interested in the process of raising a child. In any plan to improve parental benefits, it is important to keep in mind that today's fathers want, and should be allowed to play fully, their role of partner on the day of birth. They should also have an equal opportunity to provide care for their children following the birth. Until a scheme is devised which will permit them to be an integral part of the family, working fathers will continue to be only part-time parents at best while working mothers will suffer all the negative effects of career interruptions. It should be so easy to have a child and yet complications can and do arise at all stages of parenting.

Sorry Dear, But You Just Might Get Pregnant . . .

Sometimes a woman is penalized merely for having the *potential* to bear children. Legislation and policies designed to "protect" women of childbearing years have had the effect of discriminating against them and denying them some high-paying jobs. For example, as Nancy Miller Chenier reported in *Reproductive Hazards at Work*, in December, 1975, Norma James, one of several female workers in a lead storage battery division of General Motors in Oshawa, was asked by the company to show proof of her sterility or be forced to transfer to a lead-free area of the factory. The company based its decision on medical evidence it had received which suggested that the fetus could be harmed by exposure to lead. The company chose to ignore other findings which demonstrated that male workers exposed to lead could suffer low sperm counts, a decreased sex drive, and the

production of abnormal sperm — all factors which adversely affect reproduction. Because James wanted to keep her well-paid job — a job which enabled her to be at home with the children during the daytime — she underwent a tubal ligation. As she commented afterwards, "If you want your job badly enough, you'll do anything."

As James discovered, the application of protective legislation is sometimes a mixed blessing. In her case, it meant being removed from a non-traditional, i.e., higher-paying, job. Pregnant women in day care centres (traditional female job ghettoes) often encounter German measles — a known risk to the fetus. However, protection for women in this situation is a non-issue for legislators. As well, in this whole question of danger to reproduction, men continually get short-changed. Male pizza workers and steelworkers in foundries who work with high heat, for example, experience a decreased sperm count which affects reproduction, but again, little is heard about their problems.

In the long run, we have to work to eliminate reproductive hazards in the workplace for both men and women. Until then, where there is a possible risk on the job, it should be up to the woman to decide whether she wants to take that risk or not.

Sorry Dear, But You Are Pregnant . . .

It is difficult to fight policies or practices that discriminate against the hiring of pregnant women. Often employers are neither open nor honest about the reasons for refusing to hire an applicant and it is difficult to challenge their reasons. Nor is it easy for an individual pregnant woman to take a legal action against an employer. Some employers argue that in not hiring a pregnant person they are not discriminating against women — just pregnant persons. But only women can become pregnant. Surely any policy which denies employment to a pregnant person has an adverse impact on women, and hence discriminates on the basis of sex, a ground prohibited by the federal and provincial human rights codes and by the Charter of Rights and Freedoms. However, it is far from clear that these provisions effectively prohibit discrimination on the basis of pregnancy in all jurisdictions.

The recent amendments to the Canadian Human Rights Act, the Quebec Charter of Human Rights and Freedoms and the Saskatchewan Human Rights Code make it clear that discrimination on the basis of pregnancy or childbirth is discrimination on the basis of sex and is prohibited. We must encourage pregnant women who do not get jobs to take action.

You Have To Leave Now . . .

Federal and provincial labour legislation provides that no employer shall dismiss or lay off an employee because she is pregnant. That sounds good, but in effect the protection is incomplete. Some provisions protect a woman only during the period she is covered by law for maternity leave or only while she is actually on maternity leave. For example, there may be no job protection for a woman who is fired because of pregnancy when she is only four months pregnant. Furthermore, in all provinces other than Newfoundland, Saskatchewan and Prince Edward Island, if an employer dismisses a pregnant woman it is up to the woman, not the employer, to prove that she was dismissed or laid off solely because she was pregnant. Since employers are not likely to admit to firing a woman because she is pregnant, it is very difficult to prove otherwise.

There have been many battles fought over this issue. For example, until recently, Pacific Western Airlines had a company rule that flight attendants could not work beyond their fourth month of pregnancy. In 1974, two British Columbia flight attendants, Gail Anderson and Jeannette Asselstine, objected to the forced layoff and insisted that they be allowed to fly until their seventh month when they would have been eligible for UIC maternity benefits. The company refused their requests on two grounds: the women's own safety and that of the passengers. The company contended that in an emergency, pregnant flight attendants would not be able to perform satisfactorily. The two women laid a complaint against their employer. The Court sided with the airline and went even further when it concluded that physical attractiveness was indeed a factor in the employment of flight attendants.

However, that was not the last word. The Canadian Air Line Flight Attendants Association (CALFAA) complained to the Canadian Human Rights Commission that the rule discriminated against women. The Commission investigated and found that other airlines allowed flight attendants to work as far into their pregnancy as their doctors advised. In 1980, before a hearing into this matter was begun, the complaint was settled. The airline agreed to change its policy and it now permits flight attendants to work until the completion of the 26th week of pregnancy.

A pregnant woman should be allowed to continue working as long as she is willing and capable of doing the job.

When There Is Possible Danger . . .

The particular vulnerability of a developing fetus to occupational health and safety hazards has forced many pregnant women to leave their jobs early on in their pregnancy. Again, the ideal long-term solution to this problem is to develop a workplace that is free of reproductive hazards. But in the short term, cases such as that of Helen Barss are likely to continue to arise. Barss, an employee of the Ontario Ministry of Education, was an operator of a video display terminal (VDT) for four hours each day. In March, 1981, when she was five months pregnant, she requested a transfer to another job because she feared that the radioactive emissions from the VDT screen might harm the fetus. Her doctor had also recommended that she not continue operating the machine. The transfer was granted, but the new job paid $20 a week less. She filed a grievance through her union and thanks to a clause in the collective agreement, she won her case.

Unfortunately, most women workers are not covered by this or any other collective agreement. Only in the province of Quebec has the problem of a mother's concern for the health and safety of the fetus been dealt with by specific legislation which covers all women in the province. A pregnant woman in Quebec has the right to a transfer if her regular job poses risks to her health or the health of the fetus. If there is no suitable alternate job, the pregnant woman may stop working and is entitled to full pay up to the delivery date, at which time she begins her regular maternity leave.

Both men and women should have the right to withdraw from a particular job if their reproductive functions are endangered.

Having A Baby: The Bureaucratic Way

When the birth of a child is imminent, parents face an incredible array of problems. Will the woman qualify for leave? Will the man? At a time of increasing financial need, will the leave be paid?

There are two aspects to maternity leave: the first is *job protection* and this is dealt with in the maternity leave provisions enacted by the provinces. The second aspect is *compensation* while on leave and this is generally provided for in the Unemployment Insurance Act and is a federal responsibility. However, sometimes the provincial and federal provisions are at variance. For example, dates for commencing and terminating provincially regulated leave and federally regulated UIC benefits are rarely identical. Both the federal and provincial provisions are important to a would-be mother: the provincial ones ensure that she will not lose her job and the federal ones ensure that she has some guaranteed income during her maternity leave. In effect, when a woman uses her UIC maternity benefits, she is merely withdrawing from a fund she contributes to as a Canadian worker. We will deal with the provincial sphere first.

Who is entitled to leave? Before maternity leave provisions were enacted, a woman who left her job in order to give birth had no job protection under provincial legislation and was often fired. Today, provincial employment standards legislation provides some protection for pregnant women. In the Northwest Territories and the Yukon, however, there is still no such legislation and the woman who chooses to have children may find herself unemployed when she most needs a job.

People who are self-employed, no matter what their occupation, are not entitled to maternity leave rights. In the ten provinces which have maternity leave for employees, the laws do not cover all workers. For example, domestic workers, farm and horticultural workers, pharmacists, psychologists, accountants and other professionals have no maternity leave rights in some provinces.

Men are generally not permitted any leave. Quebec provides two days unpaid paternity leave and Saskatchewan allows fathers a maximum of six weeks without pay. Today, men are encouraged to participate in early child care, but that possibility is severely restricted under current law.

The laws are especially unfair to adoptive parents. Adoption agencies usually require that a parent remain at home with the new child for an extended period of time. However, only Quebec, Saskatchewan, Prince Edward Island and Nova Scotia have legislation guaranteeing the legal right to adoption leave. There is a further restriction in Nova Scotia and Prince Edward Island where adoption leave is available only to women. Although society does not differentiate between adopted and natural children in other legal respects, when it comes to the early days of parenting, the adopted child and its parents are expected to make do with less.

In order to qualify for maternity leave, a woman must have worked a required period of time for the same employer. The most stringent provision is in Ontario which demands that a woman have worked for the same employer for one year and 11 weeks prior to the expected date of birth. Most other provinces require that she have worked a minimum of 12 months for the same employer. Only New Brunswick and British Columbia have no lower "threshold" requirements.

The net effect of these special requirements is that a woman who has been forced to find another job because of a layoff, or who has accepted a position in another company less than a year before she needed maternity leave, is not entitled to the leave although she may have been in the work force continuously for years. In other words, in all provinces other than New Brunswick and British Columbia, a woman contemplating pregnancy cannot change jobs. Needless to say, there is very little flexibility in the case of an unplanned pregnancy.

Threshold requirements for parental leave should be eliminated.

How long is the leave? The length of the standard maternity leave is 17 weeks, although Alberta, British Columbia, Quebec and Saskatchewan have 18 weeks maternity leave. In some provinces, it is possible to extend the leave by a further six weeks. (Greater detail is contained in the Table at the end of this publication.)

How much notice must be given? Many provinces require that a pregnant woman give her employer notice in advance of a proposed maternity leave. It is reasonable that the employer receive some notice, the length of which may depend upon circumstances, but the laws in some provinces are unduly restrictive. For example, in Newfoundland a pregnant woman must give her employer notice of the day on which she wishes to start her leave, 15 weeks before the expected date of birth.

In most provinces, four weeks is required. In the case of a woman who gives birth prematurely, she may be unable to give any notice, and therefore may not be entitled to any leave. If British Columbia and Nova Scotia, which have no specifications, do not require notice, the rigid provisions in other provinces are very likely unnecessary.

When may leave start? If the woman has qualified for leave, in most provinces she may choose to start her leave up to 11 weeks before the expected date of birth. She may delay the start so that her leave will run until 17 weeks after the date of the actual birth, but the total time cannot exceed 17 weeks.

These rigid rules often do not meet the needs of parents. For example, thanks to advances in medical science, more and more premature babies have an excellent chance of survival if they receive special neo-natal care. However, our laws have not kept pace. The mother of such a child may be ready to return to work after a short period of leave and the parents may wish to take the rest of the leave two or three months later when the baby is ready to come home from the hospital. Current legislation makes no provision for that type of situation.

What happens to seniority and benefits during a leave? The answer to that may come as a surprise to many people. In most provinces, seniority and benefits are frozen on the date that maternity leave begins and do not accumulate during the leave. This may cause any number of problems. For example, a woman who may have been hired three months before a male colleague, but who had two maternity leaves of 17 weeks each in a five year period, would be the first of the two to lose a job if the company had to lay off workers. Only Quebec and British Columbia have recognized the inequity of the situation and now ensure that seniority and employment benefits continue to accumulate during maternity leave.

What job security is provided for the new parent? Most provincial labour legislation requires that a woman be given the same or a comparable position by her employer when she returns to work after a birth. Legislation in New Brunswick and Nova Scotia, however, assures her only of a job, with no guarantee as to wages or job duties. As previously mentioned, women in the Yukon and Northwest Territories do not have any job security at all because there is no maternity leave legislation. However, existing protection in all parts of Canada is insufficient and the case of Betty Reed, a registered laboratory technician in Toronto, explains why.

Betty Reed had been employed in a laboratory for four years when she started her maternity leave in June, 1976. In her job, she had been assigned duties which put all her skills and qualifications to good use. When she notified her employer that she would be returning to work after her leave, she was advised that there were no jobs available. After discussions with the Ministry of Labour in Ontario, the company offered her a job in the laboratory at the same wage she had been earning before she went on leave. However, the job was not comparable to the one she had left, and instead consisted of menial and unskilled work. Reed complained; an adjudicator agreed with her and ordered the company to pay her compensation.

Workers should have the right to return to the same or comparable job following their parental leave.

The Money Factor

If a parent receives leave to care for a child, how will that leave be paid for at a time when there are increasing financial demands on the family unit? The responsibility for answering that question lies in the federal domain. *Unpaid* leave is in effect *no* leave for the majority of parents who cannot afford to take time off without pay. It was the recognition of this fact that prompted amendments to the Unemployment Insurance Act in 1971.

Under the present UIC scheme a woman can receive 60 percent of her regular earnings for 15 weeks over a 17 week period. There is a maximum amount ($255 per week before deductions, as of January 1, 1984) to which she is entitled. In addition, there is a "clawback" provision whereby up to 30 percent of maternity benefits

received must be repaid to UIC if a woman earns more than a certain amount in a year. In 1984, the maximum amount a woman can earn before the "clawback" provision comes into effect is $33,150.

In order to be eligible for UIC benefits, a woman must demonstrate a "major work force attachment." That is, a woman must have worked for a minimum of 20 weeks of insurable employment during the prior 52 weeks. This provision is the same as for ordinary UIC benefits.

However, there are restrictions to entitlement. In 1984, part-time workers employed for less than 15 hours per week or who earn less than $85 a week are not entitled to maternity benefits. This has an enormous impact, in that one in four women in the labour force works part-time as compared to one in 17 working men. As well, women employed by their husbands in family businesses are generally excluded from maternity leave benefits. This is a particular concern for women who work on the family farm and women who fish with their husbands.

In this maze of regulations, it is important to distinguish again between the provincial legislation which provides unpaid maternity *leave*, the primary function of which is to safeguard a woman's job, and federal legislation which provides for *compensation* around the time of birth. Because the provincial requirements vary, a woman may qualify for UIC benefits, but not be eligible for the provincial job security scheme. It is often a case of falling into a gap between the criteria of two different bureaucracies.

If a woman does qualify for UIC maternity benefits, she has some flexibility as to when she may take those benefits. A woman must collect her 15 weeks of UIC benefits within the following time frame: from eight weeks before the expected or actual (in the case of the child's premature birth or illness) date of delivery to 17 weeks after the birth. Before she can receive the 15 weeks of benefits, a woman faces a mandatory two week waiting period during which no benefits are paid. This waiting period is the same as for any other worker who has been laid off.

In summary, these provisions for a partially paid maternity leave represent an important step forward in the recognition of a woman's right to retain her economic independence while bearing children. Indeed, in the spring of 1983, changes were made in the UIC maternity scheme which have eliminated some of its most obvious shortcomings. First, the "magic 10 rule," a rule which said that a woman must have worked at least ten weeks around the time of

conception to qualify for UIC maternity benefits, has been eliminated. Second, the rule which prohibited a woman from claiming regular UIC benefits during the period beginning eight weeks before the expected birth of her child and terminating six weeks after the birth, has been removed. Third, women are no longer required to take maternity benefits during the first 17 weeks off work. Fourth, UIC benefits received by a woman for layoff or sickness not related to pregnancy are no longer deducted from maternity benefits. Finally, mothers of premature and/or sick newborns are allowed more flexibility as to when they may take their maternity benefits.

The new UIC provisions have also improved the situation of adoptive parents. Previously, no UIC maternity benefits were available to adoptive parents, although they may have both wanted and needed compensation in order to take time off to spend with their newly-adopted child. UIC benefits are now available to either adoptive parent who demonstrates that it is reasonable for a parent to stay at home with the child. The parents may share this 17 week period. For example, one parent might take nine weeks and the other, the remaining eight weeks. All these changes came into effect January 1, 1984.

However, adoptive parents still face an obstacle. Under provincial legislation, they may not qualify for a leave of absence from their jobs — a significant factor which both contradicts the federal government's regulations and frustrates its initiative in this area.

Many problems remain with the UIC compensation scheme despite the recent improvements. Many UIC regulations are still penalizing and arbitrary. For example, the two week waiting period for regular UIC benefits is there to serve as an incentive for the unemployed worker to find another job. But women about to give birth are in no position to look for other work. Therefore, there is little logic in retaining the two week waiting period. Again, the net effect of this provision is to deprive women of two weeks of income precisely when they most need it.

The fact that UIC benefits make up only 60 percent of a woman's regular earnings also imposes a serious financial penalty on women taking maternity leave. The Canadian Union of Postal Workers (CUPW), for instance, calculated that over a 20 week leave period, a full-time postal clerk would lose over $4,000 under the UIC maternity scheme. It is possible for an employer to "top up" UIC pregnancy benefits to 93 percent of the employee's wage under a

Supplementary Benefit Plan approved by the UIC. However, in 1982 only 1,300 employers provided this benefit, and only 100 of these employers were outside Quebec.

Furthermore, even though a woman has some flexibility in choosing when she will take UIC benefits, she may be hampered by a number of peculiarities in the legislation. For example, pregnant women who are involved in a labor dispute are not entitled to maternity benefits. If a woman's union goes on strike just before her maternity leave begins, she will receive no UIC maternity benefits during the work stoppage. The effect of this provision is to deprive a woman of the maternity benefits she has already earned.

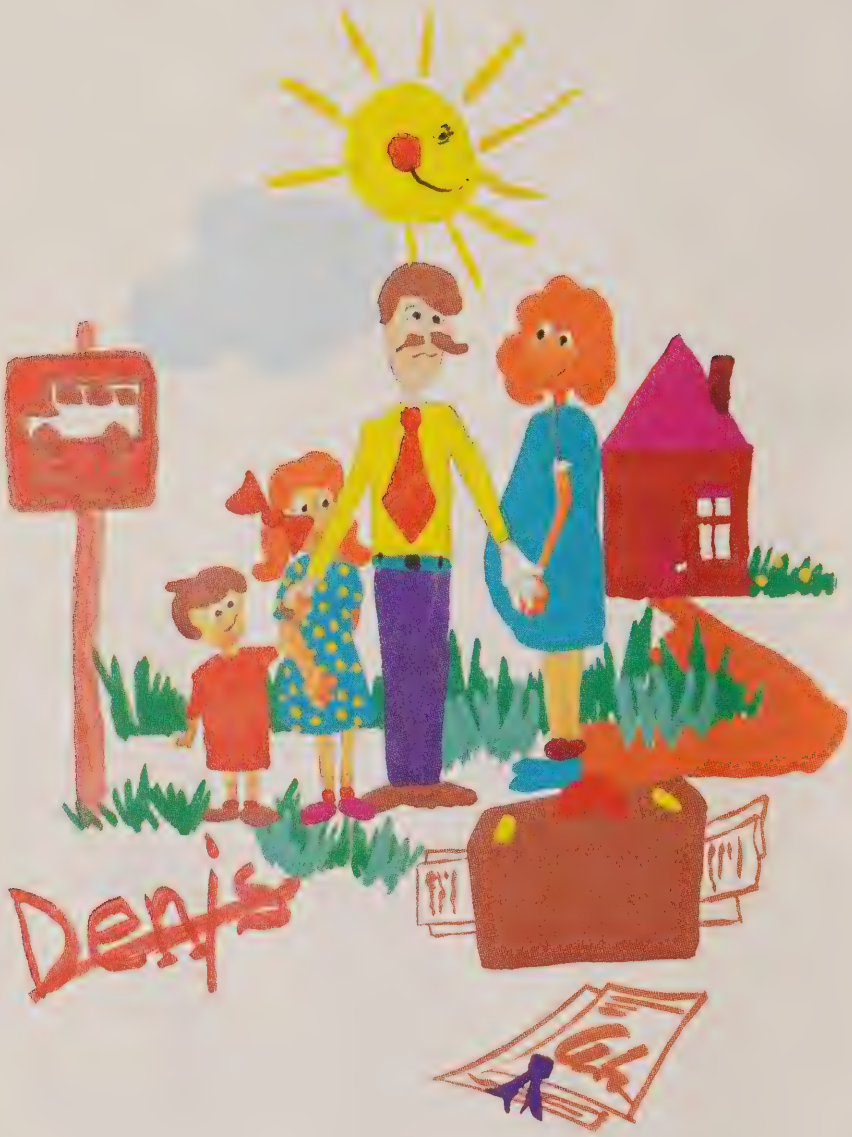
Finally, there are still no UIC parental benefits available for natural fathers who want to stay at home with the newborn child, although there are for adoptive ones.

Existing restrictions in UIC legislation which impose financial penalties or restrict access to parental benefits should be eliminated.

Changes, the collective way. The best that can be said about the current system in Canada is that *some* parents receive leave to care for their children and *some* women are paid partial compensation during that leave. However, the rules vary so much and are so complicated that a significant number get no help at all. Certain trade unions, recognizing the shortcomings of the present schemes, have taken a lead in pushing for reforms in parental leave through the mechanism of collective bargaining.

In the public sector, a major breakthrough came in 1979 as a result of negotiations between the Quebec government and its employees. Maternity leave was increased from 17 to 20 weeks at 93 percent of salary with UIC paying 60 percent for 15 weeks and the employer paying the balance. For women not entitled to UIC benefits, the employer provides a 20 week leave period with ten weeks at 93 percent pay. Paternity leave was increased to five days at full pay and paid adoption leave was increased from one day to ten weeks and two days to be taken by either spouse. These improved benefits cover over 200,000 Quebec workers.

In the summer of 1981, the Canadian Union of Postal Workers (CUPW), after a month long strike, also won the right to 20 weeks of 93 percent paid maternity leave from their employer, the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Treasury Board of Canada. Considerable support for the idea of extended paid maternity leave was indicated in a 1982 Gallup poll which showed that 61 percent of Canadians felt the benefits CUPW negotiated should be available to all women workers.

In the private sector, a major gain was achieved in February, 1982, by the Communication Workers of Canada in their negotiations with Bell Canada. The maternity provisions, which came into effect January, 1984, require the employer to make up the difference between 60 percent and 75 percent of an employee's regular salary. The agreement covers 7,000 operators and dining employees —95 percent of whom are women, and 15,000 technicians — five percent of whom are women.

In addition to using collective bargaining to get better benefits, trade unions have also used the grievance procedure in an attempt to get regular sickness and disability benefit coverage for pregnancy-related and childbirth absences. This tactic has been used where trade unions have been unable to obtain increased benefits and when they have had no other recourse. It is one way of extending regular coverage in order to obtain some compensation for pregnancy-related absences. Although the state of pregnancy is not an illness, there is a period close to the birth itself when a woman is unable to do her regular paid work. So far, however, the unions have been largely unsuccessful in trying to make existing benefits for those unable to work applicable to absences due to pregnancy or childbirth. Two cases illustrate the difficulties they have faced:

> *In 1979, a town planner employed by the government of Canada, Loraine Tellier-Cohen, attempted to use her accumulated sick leave when she was absent from work for three weeks after the birth of her child. She wanted to use her accumulated sick leave credits (instead of UIC benefits based only on 60 percent of her earnings) to avoid a loss in pay during this period. When the government refused to allow this as an option, she protested. The Canadian Human Rights Review Tribunal held that pregnancy-related discrimination is sex discrimination. Nevertheless, it found that pregnancy was not an illness and therefore, Tellier-Cohen could not use her*

accumulated sick time, which would have been at full pay, to cover the four week period she was absent from work.

Cindy Tracey, an employee of the Ontario Ministry of Correctional Services, claimed compensation under a short-term benefit plan for sickness or injury when she gave birth by Caesarean section on September 6, 1978. Although a male colleague who had undergone a gall-bladder operation would have received such benefits, an arbitrator ruled that she could not. His reason was that absence from work due to childbirth was not caused by sickness or illness and therefore she was not entitled to compensation.

In 1983, the Canadian Human Rights Act was amended to specify that discrimination on the basis of pregnancy or childbirth is prohibited as discrimination on the basis of sex. The Canadian Advisory Council on the Status of Women welcomes the passage of legislation which confirms this decision, but points out that women may still be denied sick leave benefits during pregnancy leave.

How Does Canada Rate Internationally On Parental Benefits?

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women which Canada signed on July 17, 1980, provides that women receive maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. Although Canada ratified this convention on December 10, 1981, this standard has not been achieved for most women workers. Indeed, compared to other countries and their treatment of pregnant women, Canada has not distinguished itself.

In the United States, there is no universal statutory provision for parental leave or compensation. As well, pregnant women used to be excluded from coverage under their employer's short-term disability programs. This prompted a new law in 1978, The

Pregnancy Discrimination Act, which made it illegal for an employer to discriminate against a woman because of pregnancy, childbirth or pregnancy-related disabilities. Now an employer can no longer exclude pregnancy-related or childbirth absences from coverage in the employee benefit plans.

With no legislated maternity benefits in the United States, it follows that women there would look to their employer for private short-term disability plans for compensation. However, in electing to go the route of private insurance in contrast to the general legislation which exists in Canada, The Pregnancy Discrimination Act has not eliminated all problems for the female worker. For example, an American pregnant worker will receive maternity benefits only if her employer has a sick leave and disability compensation plan. Given that women earn less than men, tend to work in job ghettoes, and their employers are often small businesses offering meagre sick leave benefits, the end result is that many women have little protection.

In Europe, many countries provide a much higher level of compensation than Canada. Most European countries do have a maximum allowable limit of benefits, which means that no one gets earnings beyond that point even if a substantial portion of their salary exceeds that figure. This is similar to UIC regulations in Canada which stipulate that claimants are entitled to 60 percent of their earnings but only up to a certain point which is the maximum allowable for everyone. The most complete coverage exists in Sweden where parents can share a total of nine months leave at 90 percent of their regular earnings after the birth of a child. A further nine months of unpaid leave is available to the parents. In addition, parents may reduce their working hours to six hours a day if they have a child under eight years of age. The following countries provide maternity leave for women at 100 percent of their regular earnings: East Germany, 26 weeks; Hungary, 20 weeks; Luxembourg, 16 weeks; Netherlands, 12 weeks; Poland, 16 weeks for the first child, 18 weeks for subsequent children; West Germany, 14 weeks. Danish women receive 14 weeks at 90 percent of their regular earnings; in France, women receive 90 percent of their regular earnings for 16 weeks, and for 26 weeks for the third and subsequent children.


A
B

How Can We Improve The Situation?

The following is a list of possible modifications to current legislation in Canada. Implementation of any of these principles would bring a vast improvement to the lives of most parents in the labour force.

Pregnant women should have the right to be employed and to continue working so long as they are willing and capable of doing the job.

A workplace should be free of reproductive hazards for both men and women. Until this is achieved, they should have the right to transfer to another job without loss of pay if their reproductive systems are at risk.

Threshold requirements for parental leave, such as the requirements of continuous employment with the same employer for 12 months, should be eliminated.

Twenty-six weeks parental leave should be available to all working mothers and fathers, including adoptive parents; the choice to be left to the family unit as to when each parent will take the leave.

Parental leave compensation, consisting of 95 percent of an employee's average earnings with no weekly maximum and no waiting period, should be available. Since working women earn 60 percent of men's wages, unless parental leave is fully paid, the family unit will not be able to afford to have the higher paid spouse stay at home.

Part-time workers should be entitled to paid parental leave.

Seniority and other employment benefits should accumulate during parental leave.

The payment of parental benefits should be made independent of regular UIC benefits. This would be an improvement over the present system which often denies benefits to pregnant women who get laid off, are unable to find work or become ill.

Once the parental leave is over, workers should have the right to return to the same or comparable job.

How Much Will This Parental Scheme Cost?

Not all that much. First of all, not that many women working in the paid labour force are having children. In any year, only 2.9 percent of women working outside the home go on maternity leave. In 1981, the average number of children per Canadian family was 1.4. If we assume that women will work for pay for 40 years, maternity leave of 26 weeks per child represents 1.75 percent of that worklife.

Nevertheless, the question of cost inevitably arises when discussing improvements in parental benefits, whether they follow the American approach of private insurance coverage for childbirth leave or the European model of legislated reforms and government support. While most Canadians agree in principle with the notion of helping working parents raise their families, they do have certain questions. Can we afford to improve parental benefits in these times of economic recession? Won't the costs be exorbitant and uncontrollable? This is a legitimate concern but an increasing number of studies, as well as data concerning the effect of such schemes, where they already exist, suggest not. Improved benefits may not be as great an additional burden as we fear and we should consider them in light of the importance of our commitment to sharing the costs of having children. The following examples should be useful in considering these issues:

In the United States, following the passage of The Pregnancy Discrimination Act, employers were greatly concerned that insurance costs

would skyrocket. But they have not. Indeed, experience has shown that pregnancy disability coverage costs only $7.00 annually per member of the work force.

In the province of Saskatchewan, where the human rights legislation mirrors that U.S. Act, it was calculated that to extend benefits of short-term disability plans to pregnancy leave (as a means of topping up UIC payments to 93 percent of average salary) would cost the government a modest total of $117,000 a year (using women's average earnings in Saskatchewan for the purposes of these calculations).

In preparation for its negotiations with the Treasury Board in 1981, the Canadian Union of Postal Workers calculated that the cost to top up UIC benefits for its members in order to provide 20 weeks of fully-paid maternity leave would be one-quarter of one percent of the total payroll.

The Quebec government has costed the 20 weeks maternity leave at 93 percent of salary to be 0.69 percent of the total salary budget in 1979.

Economist Monica Townson studied the cost of a national system of parental leave, using the existing UIC scheme, in a report commissioned by Labour Canada and released in 1983. From this study, it is possible to calculate that fully-paid parental leave for 1985 would cost $1.19 more per week for the employee and $1.63 per week more for the employer compared to their 1981 UIC contributions.

As is evident from these examples, the costs of fully-paid parental leave are not staggering, but are well within Canada's means even under the current economic restrictions. While collective

bargaining is one strategy to achieve that goal, the majority of workers, and women in particular, remain unorganized. These workers rely on provincial employment standards and UIC legislation for their rights and so these universal schemes must be improved.

Finally . . .

The parenting of children is an important issue for all of us. Although it is women who bear the children and still have primary care of them, more and more women are remaining in the paid work force while more men are taking greater responsibility for parenting. This trend will continue and men should be encouraged to broaden their role in the nurturing process. Attitudes and assumptions about child care must change to meet the new realities. We must also remove the institutional barriers and inequalities in laws so that fathers have the opportunity to parent. It is only when the artificial constraints imposed by today's legislation are removed that men will be able to shoulder equally the responsibilities of child care, and both men and women will be free to make important choices about their commitments to family and work.

The proposed scheme of benefits for parents in the labour force will disentangle families from the confusing and even conflicting employment standards and unemployment insurance legislation. The current laws operate to take away a family's choice on how to care for their children by limiting that choice through arbitrary regulations and sexual stereotypes. It is up to parents to make the choice about how to best care for their newborn. The proposed legislative changes are simple, not prohibitively expensive, and would allow parents to have children without jeopardizing a career or incurring financial hardships. The decision to have a child in Canada is one that should be made in the context of a range of choices which are not restricted by outdated legislation. The goal is to make it possible for all parents to share the joy and burdens of child care. It is a proposal that will enrich us all.

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MATERNITY, PATERNITY AND ADOPTION LEAVES IN FEDERAL AND PROVINCIAL JURISDICTIONS, 1983

MATERNITY LEAVES

Female Workers Excluded from Coverage	Qualifying Period	Notice	Maximum Basic Length of Leave	Extension of Leave	Seniority Benefits	Reinstatement	Rights of Employer to Require Leave	Pregnancy-Related Illness
FEDERAL GOVERNMENT								
None	12 months of continuous employment with the same employer.	Notice in writing 4 weeks before leave; medical certificate certifying pregnancy and estimating date of birth; if no notice, 17 weeks with medical certificate stating she is unable to perform duties (reason must be related to pregnancy).	17 weeks	Not specified.	Employer not required to continue seniority or benefits during leave; employment after leave is deemed continuous with employment before leave.	Same or comparable position with not less than the same wages and benefits.	Cannot dismiss or lay off because of pregnancy; discrimination on the basis of pregnancy is discrimination on the basis of sex and is prohibited.	For employees with 3 months continuous employment, their position is protected for up to 12 weeks of illness, including illness related to pregnancy.
BRITISH COLUMBIA								
Farm labourers and horticulture employees; domestic workers in private residence.	None	None	18 weeks	Up to 6 weeks for medical reasons related to pregnancy.	Employer is required to continue payments to benefit plans; employment is deemed continuous.	Same or comparable position with all increments to wages and benefits as if leave had not been taken.	Cannot dismiss or lay off because of pregnancy; may require leave where duties cannot reasonably be performed because of the pregnancy; onus on employer.	Employer cannot distinguish pregnancy-related illness from other illness.
ALBERTA								
Domestic workers in private residence; farm labourers; municipal police; provincial government employees.	12 months of employment with the same employer.	2 weeks notice before leave; medical certificate certifying pregnancy and estimating date of birth.	18 weeks	Up to 3 weeks for a medical condition arising after delivery.	Employee retains seniority and benefits accumulated prior to leave; no contribution required while on leave.	Same or comparable position with not less than the same wages and benefits.	Cannot dismiss or lay off due to pregnancy; may require leave where pregnancy interferes with duties.	Interpreted by Human Rights Commission to be against The Individual Rights Protection Act to distinguish pregnancy-related illness from other illness.
SASKATCHEWAN								
Farm labourers; ranching or market gardening employees; some domestic workers.	12 months of continuous employment with the same employer.	4 weeks notice before leave; medical certificate certifying pregnancy and estimating date of birth.	18 weeks	Up to 6 weeks for medical reasons.	Employee retains seniority and benefits accrued prior to leave; no contribution required while on leave.	Same or comparable position at not less than the wages, benefits and seniority accrued before the leave began.	Cannot dismiss or lay off because of pregnancy; may require leave if duties cannot reasonably be performed because of pregnancy; onus on employer.	Employer cannot discriminate because the employee is temporarily disabled due to pregnancy.
MANITOBA								
Farm labourers.	12 months of continuous employment with the same employer.	Notice in writing 4 weeks before leave; medical certificate certifying pregnancy and estimating date of birth.	17 weeks	Extension beyond 17 weeks if delivery occurs after the estimated date.	Employer not required to continue seniority or benefits during leave; employment after leave is deemed continuous with employment before leave.	Same or comparable position with not less than the same wages and benefits.	Cannot dismiss or lay off an employee (who has completed 12 months of employment) solely because of pregnancy.	No provision.
ONTARIO								
None	12 months and 11 weeks of employment with the same employer.	Notice in writing 2 weeks before leave; medical certificate certifying pregnancy and estimating date of birth.	17 weeks	Not specified.	Seniority and benefits accrue to the commencement of leave.	Same or comparable position with not less than the same wages at the time her leave of absence began.	Cannot dismiss or lay off an employee who is entitled to maternity leave; may require leave if duties cannot reasonably be performed because of pregnancy or the performance is materially affected by the pregnancy.	No distinction.
QUEBEC								
Farm labourers on farms with three employees or less; day care domestics.	20 weeks of employment with the same employer in the 12 months before leave.	Notice in writing 3 weeks before leave; medical certificate certifying pregnancy and estimating date of birth.	18 weeks	Up to 6 weeks if employee's state of health or that of her child requires the extension.	Seniority and benefits continue during leave; employer is required to continue usual payments to benefit plans.	Same position with all increments to wages and benefits as if leave had not been taken.	For the 6 weeks prior to birth, the employer may require the employee to produce a medical certificate attesting to the fact that she is fit to work. If not produced, the employer may require her to begin the leave immediately.	No distinction; special provisions for miscarriages, abortions and stillbirths.
NEW BRUNSWICK								
Domestic workers in private residence; farm-related services on a farm; a child employed by her parents or guardian.	None	Medical certificate stating delivery will probably take place within 6 weeks.	17 weeks	Not specified.	None accrue during leave.	Not specified.	Cannot refuse to hire solely because of pregnancy.	Not specified.
PRINCE EDWARD ISLAND								
Farm labourers on farms.	12 months of continuous employment with the same employer.	Notice in writing 4 weeks before leave; medical certificate certifying pregnancy and estimating date of birth.	17 weeks	Not specified.	None accrue during leave; employer is not required to pay pension benefits during leave.	Same or comparable position with all increments to wages and benefits as if leave had not been taken.	Cannot dismiss, lay off, or suspend solely because of pregnancy. May require leave if duties cannot reasonably be performed because of pregnancy within 3 months of birth; onus on employer to prove interference.	Employer cannot distinguish from other illness.
NOVA SCOTIA								
Domestic workers in private residence; students and practitioners of architecture, dentistry, law, medicine, chiropody, optometry, pharmacy, engineering, accounting, psychology, surveying, veterinary science.	12 months of employment with the same employer.	Medical certificate certifying pregnancy and estimating date of birth.	17 weeks	Not specified.	None accrue during leave.	Guaranteed resumption of work; no loss of benefits or security accrued before the maternity leave.	Cannot dismiss because of pregnancy; may require leave if duties cannot reasonably be performed because of pregnancy or the performance is materially affected by the pregnancy.	Not specified.
NEWFOUNDLAND								
Domestic workers in any premises where board or lodging for less than three persons is provided as remuneration.	12 months of continuous employment with the same employer.	15 weeks notice before birth; medical certificate certifying pregnancy and estimating date of birth.	17 weeks	Not specified.	None accrue during leave.	Terms of employment are such that the wages, duties, benefits and positions are not less beneficial than those before the leave began.	Cannot dismiss an employee because of maternity leave permitted by Act; may require an employee to take leave; onus on employer.	Not specified.
YUKON								
No maternity leave legislation.								
NORTHWEST TERRITORIES								
No maternity leave legislation.								

PATERNITY LEAVES

None	

ADOPTION LEAVES

None
None
None
None
6 weeks to be taken during the 3 months before or after the birth available to an employee who has 12 months continuous employment with the same employer.
None
None
None
2 days at the birth of a child.
2 days at the adoption of a child.
None
None
Up to 6 weeks for female employee.
None
Up to 5 weeks total leave for female employee only, upon adoption of a child age 5 or under.
None
None

Federal Government: Canada Labour Code, Part III, Division V.1
British Columbia: Employment Standards Act, Part 7
Alberta: The Employment Standards Act, Division 7
Saskatchewan: Labour Standards Act, Part IV
Manitoba: Employment Standards Act
Ontario: Employment Standards Act, Part XI
Quebec: Regulations Respecting Labour Standards, Division VI
New Brunswick: Employment Standards Act
Prince Edward Island: Labour Act
Nova Scotia: Labour Standards Code
Newfoundland: The Labour Standards Act, Part VI

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